

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7866 OF 2015

(Arising out of Special Leave Petition(Civil)No. 19008 of 2013)

BHANWAR LAL

...APPELLANT

VERSUS

CHAGAN LAL

...RESPONDENT

O R D E R

Leave granted.

This appeal arises out of an order dated 4th February, 2013 passed by the High Court of Judicature for Rajasthan at Jodhpur whereby the High Court has dismissed S.B. Civil Writ Petition No.11606 of 2012 and affirmed an order dated 20th September, 2012 passed by the Civil Judge (Junior Division) Balotra declining an application filed by the plaintiff-appellant under Order VIII Rule 6C of the Code of Civil Procedure for exclusion of the counter-claim made by the defendant-respondent. The facts are few and may be summarized as under.

The plaintiff-appellant claims to be the owner of the suit property which according to the averments made in the plaint is in the occupation of the defendant as a tenant on payment of a monthly rental of Rs.500/-. In Civil Suit No. 43 of 2001 filed by him, the plaintiff-appellant has sought a decree for possession against the defendant. It is common ground that the alleged tenancy is not protected under the rent control legislation of the State of Rajasthan as the place where the property in dispute is situate is not covered by the said legislation. The net effect, therefore, is that the rights and liabilities of the parties would be governed by the Transfer of

Property Act, and all that the plaintiff may be required to prove in order to succeed in the suit is that the jural relationship between him and the tenant has been terminated by service of a notice. Be that as it may, the defendant appeared to contest the suit in which he not only denied the jural relationship between him and the plaintiff but set-up a plea of adverse possession. The defendant also claimed that the plaintiff had entered into an agreement to sell the property in dispute to him. In the counter-claim made by him he prayed for a decree for declaration of his title and specific performance of the alleged agreement. It was, at this stage, that the plaintiff-appellant moved an application under Order VIII Rule 6C of the C.P.C. for a direction that the counter-claim made by the defendant-respondent be excluded and tried as an independent suit. The trial court considered that application but rejected the same by its order dated 20th September, 2012, aggrieved whereof the appellant preferred W.P.No.11606 of 2012 before the High Court of Judicature at Jodhpur. A Single Judge of that court has, in terms of its order dated 4th February, 2013, declined to interfere with the order passed by the court below and dismissed the writ petition mentioned above. The present appeal, as noticed earlier, calls in question the correctness of the said order.

We have heard learned counsel for the parties at some length. The material facts are not in dispute. It is not in dispute that the plaintiff claims to be the owner of the suit property. It is also evident from a reading of the plaint that the plaintiff claims to have let out the property in dispute to the defendant on payment of a monthly rental of Rs.500/-. The plaintiff's case is that the defendant is in occupation of the suit premises as a tenant and no more. Left at that, the defendant's denial of the jural relationship would only give

rise to one issue, namely, whether the relationship between the parties is that of landlord and the tenant. For the plaintiff to succeed in the suit he ought to establish that relationship but should he fail to do so, the court would be required to go no further except to dismiss the suit. The counter-claim made by the defendant, namely, that he is in occupation of the premises in question by adverse possession or that he has entered into an agreement to purchase the property hence entitled to a decree for specific performance of the said agreement would give a totally new dimension to the controversy which the plaintiff has brought to the court. The defence taken by the defendant would, in fact, convert a simple suit for possession by eviction of the tenant into a suit for title. It is, however, fairly well settled that a suit for eviction by possession of the tenant cannot be converted into a title suit. The defendant's counter-claim attempted to do that, and the only way that could be avoided was by excluding the counter-claim made by the defendant-respondent. Inasmuch as the trial court and the High Court failed to appreciate this aspect they fell in a palpable error that calls for a correction. The position may have indeed been different, if the defendant had not asked for the exclusion of counter-claim under Order VIII Rule 6C of the C.P.C. But in the case at hand the plaintiff had objected to the counter-claim being tried in his suit and made a specific application asking for exclusion of the same. The courts below have, it is evident, while considering that request, failed to reckon the effect of non-exclusion.

In the result we allow this appeal, set aside the order passed by the courts below and direct that the trial court to exclude the counter-claim made by the defendant-respondent and to try the same as an independent suit within the contours of Order VIII Rule

6C of the CPC. We make it clear that the exclusion of counter-claim would not absolve the plaintiff from proving that he is the landlord and the defendant-his tenant in occupation of the suit premises.

The parties to appear before the trial court on Tuesday, the 3rd November, 2015.

.....J.
(T.S. THAKUR)

.....J.
(KURIAN JOSEPH)

NEW DELHI;
DATED 22ND SEPTEMBER, 2015.

ITEM NO.5

COURT NO.2

SECTION XV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 19008/2013

(Arising out of impugned final judgment and order dated 04/02/2013 in SBCWP No. 11606/2012 passed by the High Court Of Rajasthan At Jodhpur)

BHANWAR LAL

Petitioner(s)

VERSUS

CHAGAN LAL

Respondent(s)

(with appln. (s) for stay and interim relief and office report)

Date : 22/09/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MR. JUSTICE V. GOPALA GOWDA

For Petitioner(s) Mr. Mrinmay Bhattmewara, Adv.
Mr. Sanjay Kumar Tyagi, Adv.

For Respondent(s) Mr. H.D. Thanvi, Adv.
Mr. Sarad Kumar Singhania, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

In terms of the signed order, this appeal is allowed:

"In the result we allow this appeal, set aside the order passed by the courts below and direct that the trial court to exclude the counter-claim made by the defendant-respondent and to try the same as an independent suit within the contours of Order VIII Rule 6C of the CPC. We make it clear that the exclusion of counter-claim would not absolve the plaintiff from proving that he is the landlord and the defendant-his tenant in occupation of the suit premises.

The parties to appear before the trial court on Tuesday, the 3rd November, 2015."

(MAHABIR SINGH)
COURT MASTER

(VEENA KHERA)
COURT MASTER

(Signed order is placed on the file)